

App No. 33663

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made this 3rd day of November, 1995, by and between 1) Bread & Circus, Inc. ("Tenant"), a Massachusetts corporation, having its principal office at 17 Lincoln Street, Newton Highlands, MA. and 2) the following organizations residing in the District of Columbia: Advisory Neighborhood Commission 3-B, Advisory Neighborhood Commission 3-C, the Glover Park Citizens Association, and the Massachusetts Avenue Heights Citizens Association ("Neighbors").

WHEREAS, the Tenant and Neighbors each desire to see the construction and operation of a grocery store ("Tenant's Store") by Tenant at what, on May 1, 1995, was 2323 Wisconsin Avenue, N.W., Washington, D.C. and the operation of Tenant's Store in a manner consistent with the interests of the Neighbors in not increasing traffic in the neighborhoods represented by Neighbors and in maintaining the Guy Mason Recreational Center as a vital center of neighborhood recreational activity; and

WHEREAS, pending before the District of Columbia Alcoholic Beverage Control Board (the "ABC Board") is the applicant's Application Number 33663 (the "Application") for a District of Columbia Retail Class B Alcoholic Beverage License (the "ABC License") for the Tenant's Store; and

WHEREAS, the Neighbors have protested the Application (Case No. 33663-95047P); and

WHEREAS, the parties desire to resolve the protest in the manner hereinafter provided;

THEREFORE, in consideration of the premises recited above and the covenants and promises set forth below, the parties agree as follows:

1. The Neighbors will not oppose the application of Tenant for a Retailer's Class B liquor license for the Tenant's Store.

*Pursuant to this agreement and in order to appear before the Board, the Protest is withdrawn.*

2. The Neighbors will cease efforts to secure the revocation or limitation of any licenses or permits previously secured by Tenant as of May 1, 1995 for the Tenant's Store. Prior to the effective date of this Agreement, and at such time as permits and licenses are acquired thereafter, Tenant shall provide Neighbors with copies of all permits and licenses secured by Tenant for the Tenant's Store that are in its possession or are available upon request at the District of Columbia Departments of Consumer and Regulatory Affairs and Public Works.

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MIS  
B*

3. The Tenant and Neighbors will use their best efforts to obtain from the City's Department of Traffic Control (1) written confirmation, backing up already obtained verbal confirmation, that the City prior to the opening of the Tenant's Store will re-time the traffic lights at the corners of Wisconsin Avenue, N.W. and Hall Place, N.W. and Wisconsin Avenue, N.W. and Calvert Street, N.W., and (2) assurance that left turns from the exit of Tenant's premises onto Wisconsin Avenue will be permitted and that such traffic devices as are necessary to facilitate such left turns in a safe manner will be installed as required.

4. Upon Tenant's receipt of the Retailer's Class B liquor license for Tenant's Store, Neighbors will propose an individual or firm to be responsible for performing a traffic study regarding the effects of the operation of Tenant's Store upon traffic on Wisconsin Avenue and in the neighborhoods represented by Neighbors. The selection of the individual or firm shall be subject to the approval of Tenant, which shall not be unreasonably withheld. Tenant will pay the cost of this study, up to \$5,000. The individual or firm selected may collect such baseline data as determined to be necessary prior to the opening of the Tenant's Store but should avoid any unnecessary duplication of data collected by the December 1994 analysis of Robert L. Morris, Inc. The full study to determine the effects of the operation of Tenant's Store shall be commenced no earlier than 60 days and no later than 120 days after the Tenant's Store opens. Should the study demonstrate the need for a traffic light or other traffic control devices, and the City's Department of Traffic Control agrees with the findings, the Tenant agrees to exercise due diligence to secure the installation of appropriate traffic control devices and any government approvals required, and to pay the full cost of the installation of such devices.

5. Tenant and Neighbors agree that every effort should be made by Tenant to assure that the traffic to and from the parking lot of the Guy Mason Recreation Center and that part of Observatory Circle between Calvert Street Northwest and the northern property line of 2323 Wisconsin Avenue (together, "the parking lot") shall be managed to minimize the effects of traffic on the recreational uses of the Guy Mason Recreational Center and the quiet enjoyment by those represented by the Neighbors of their neighborhood. To that end, Tenant shall use its best efforts, in consultation with Neighbors, to assure that its employees, agents, vendors and customers and others subject to their influence comply with the following limitations on travel to and from and on the use of the parking lot:

- a. Employees and customers of Tenant's Store will be allowed to enter Tenant's store only through its Wisconsin Avenue entrance.

- b. Employee vehicles (other than delivery trucks) and customer vehicles shall not have access to the parking lot.
  - c. Vehicles operated by persons doing business with Tenant shall enter and exit the parking lot only from Wisconsin Avenue and only via Calvert Street and shall use no street for travel between Massachusetts Avenue and Wisconsin Avenue other than Garfield Street.
  - d. No vehicles operated by persons doing business with Tenant will be present on the parking lot at any time of any day after 9:00 P.M. or before 7:00 A.M., nor be parked in the parking lot at any time; provided, however, that vehicles using the parking lot of the Guy Mason Recreation Center shall not be considered to be parked if they are in line, not being loaded or unloaded, occupied by a driver and awaiting movement of other traffic to either enter or depart Tenant's Store.
  - e. Tenant shall use its best efforts to schedule the arrival of any trucks doing business with Tenant to limit the volume of traffic entering the parking lot to assure that: 1) no trucks are standing or parked on the parking lot or on streets outside the parking lot waiting to enter the parking lot at any time; 2) that truck traffic is limited to the lane designated on the eastern side of the parking lot; and 3) that the [84] parking spaces designated for public use in the parking lot remain available at all times for persons using the recreational facilities of the Guy Mason Recreational center.
6. Tenant shall use its best efforts, in consultation with Neighbors, to assure that access to properties south of what, on May 1, 1995, was 2323 Wisconsin Avenue, N.W., Washington, D.C. shall not be made available via Observatory Circle or via the properties located at what, on May 1, 1995, was 2323 Wisconsin Avenue, N.W., Washington, D.C.
7. Tenant shall use its best efforts, in consultation with Neighbors, to assure that the properties and facilities of the Guy Mason Recreation Center are preserved and enhanced for recreational use.
8. Tenant and Neighbors shall take the necessary steps to assure that this Agreement is valid and enforceable under the laws of the District of Columbia.
9. Neighbors, acting individually or collectively, shall give Tenant written notice of any claim that Tenant has violated

this Agreement and Tenant shall have 30 days after receipt of any such notice to comply with the Agreement or make arrangements with Neighbors before Neighbors may institute any action to resolve disputes under this Agreement pursuant to paragraph 10 of this agreement.

10. Disputes arising under this Agreement may be the basis for petitions for relief before the ABC Board, and at Neighbors option, shall be subject to arbitration under the rules of the American Arbitration Association.

11. Should Tenant be found in violation of this Agreement, in addition to complying with any other order of the ABC Board or an Arbitrator or Arbitration Panel, Tenant shall compensate Neighbors for all costs reasonably incurred in enforcing this Agreement in cases where Tenant's violation is advertent and without reasonable basis in this Agreement.

12. This Agreement shall be binding upon the successors and assigns of Tenant and Neighbors.

13. This Agreement shall become effective when signed by the authorized representatives of the Neighbors and Tenant.

14. This Settlement Agreement shall be binding upon and enforceable against the successors and assigns of the Neighbors and Tenant.

15. Should Tenant not be granted a Retail Class B liquor license for the Tenant's Store on or before November 30, 1995, Tenant, at its sole option, may, within the next 30 days, declare this Agreement to be null and void and have no force and effect, and neither the Tenant nor the Neighbors shall have any rights or obligations under this Agreement.



Hereby agreed to by:

Bread & Circus, Inc.

                     Date

*Paul C. Jony*  
Advisory Neighborhood  
Commission 3-B

11-02-95

                     Date

Advisory Neighborhood  
Commission 3-C

                     Date

Glover Park Citizens Association

                     Date

Massachusetts Avenue Heights  
Citizens Association

                     Date

Witnessed by:

*Gina L. Shapiro*

11/2/95

                     Date

Bread & Circus, Inc.

Date \_\_\_\_\_

Advisory Neighborhood  
Commission 3-B

Date

Jeremy C. Bates  
Advisory Neighborhood Commission 3-C Chairman

Nov. 3, 1995

Date

Glover Park Citizens Association

Date

Massachusetts Avenue Heights  
Citizens Association

Date

Witnessed by:

Lucia Burchill

11-3-95

Date \_\_\_\_\_

Hereby agreed to by:

Bread & Circus, Inc.

                      
Date

Advisory Neighborhood  
Commission 3-B

                      
Date

Advisory Neighborhood  
Commission 3-C

                      
Date

Milton G. Grossman  
attorney for  
Glover Park Citizens Association

10/30/95

                      
Date

Massachusetts Avenue Heights  
Citizens Association

                      
Date

Witnessed by:

Dana K. Grossman

Oct. 30, 1995  
Date



Hereby agreed to by:

Bread & Circus, Inc.

                     Date

Advisory Neighborhood  
Commission 3-B

                     Date

Advisory Neighborhood  
Commission 3-C

                     Date

Glover Park Citizens Association

                     Date

*Paul A. Lingham*  
Massachusetts Avenue Heights  
Citizens Association

11/2/95

                     Date

Witnessed by:

*Kenneth C. Auer*

11/2/95

                     Date